



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 31, 1990

Mr. Ron Lindsey
Commissioner
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR90-602

Dear Mr. Lindsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9890.

You have received a request for "all releasable documents" pertaining to a Title VII complaint that was filed against two employees of your agency. Specifically, the request asks for:

1. All questions asked by the CRO [Civil Rights Officer]
2. Individuals interviewed
3. Their responses

You indicate that you will release all of the information requested with the exception of information that you have marked on a document that you have enclosed for our inspection. The information marked is a record of contacts that were made by the Texas Department of Human Services [DHS] personnel for the purpose of making a decision on the application for employment with the department of a certain person not named in the complaint. The parts that you have marked are the names, evaluations, and opinions of persons both in and outside of the department.

Based upon an earlier open records letter issued by this office, OR88-136, you assert that the marked information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. That section excepts

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation, cannot be withheld under section 3(a)(11). See generally Open Records Decision No. 213 (1978).

Open Records Letter OR88-136 stated that information contained on a standardized form that comprised opinions on and evaluations of finalists for a particular job posting was excepted by section 3(a)(11) of the act. The information that you have marked is similar to the information addressed in OR88-136.

We have considered the exception you claimed, specifically 3(a)(11), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 538 (1990), a copy of which is enclosed, resolves your request. The names of the persons who were contacted are not excepted from disclosure by section 3(a)(11), but the record of their opinions and evaluations may be withheld under that section.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-602.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 9890

Enclosure: Open Records Decision No. 538 (1990)

cc: Frank Evans
Staff Development Specialist
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